

SEP 9 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTORIANO VILLA-BOJORQUEZ,

Defendant - Appellant.

No. 03-30044

D.C. No. CR-02-30011-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted July 28, 2003**

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

Victoriano Villa-Bojorquez appeals his sentence following his guilty plea to one count of manufacturing more than fifty grams of methamphetamine, in

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** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii). Because the district court did not clearly err in denying Villa-Bojorquez a sentence below the mandatory minimum under the “safety valve” provision of the Sentencing Guidelines, we affirm. See United States v. Franco-Lopez, 312 F.3d 984, 993 (9th Cir. 2002).

To qualify for safety valve relief, Villa-Bojorquez had the burden to show by a preponderance of the evidence that he “has truthfully provided to the Government all information and evidence the defendant has concerning the offense.” U.S.S.G. § 5C1.2(5); see Franco-Lopez, 312 F.3d at 993. The district court agreed with the government that Villa-Bojorquez had not been fully truthful about his drug offense. Villa-Bojorquez claimed that he had bought all the methamphetamine from one individual, and after converting it into another form, sold it back to that same individual. He does not claim on appeal that he made any profit from the transactions. Further, the telephone number he provided for his source (and purported customer) was incorrect. The court did not clearly err in denying him the sentence reduction.

AFFIRMED.